

ROUTING AND TRANSMITTAL SLIP

Date

Mar. 8

(44)

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. David Stangel

2.

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

David —
Attached is the
notice I promised regarding
the existing stocks for products
cancelled by the July 13 1984
wood preservative notice. Please
let me know what you think —
This draft has been reviewed by
both Pat Roberts & Kevin Lee, but
has not been cleared by Mark
Greenwood, our new associate. OVER

DO NOT use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Cara Jablon

Room No.—Bldg.

513 WT

Phone No.

382-7505

5041-102

☆ U.S. GPO: 1986-491-247/40009

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA
FPMR (41 CFR) 101-11.206

I will be out of the office
tomorrow & Thurs.

I think it is desirable
to try to get this Notice
out as soon as possible.

Thanks.

Cara.

Received of the
Hon. Secy. of the
Interior
Washington, D.C.
March 13, 1934
Dear Sir:
I have the honor to
acknowledge the receipt
of your letter of the
11th inst. regarding
the proposed
amendment to the
Act of March 3, 1909,
relating to the
National Archives.
The proposed
amendment is being
considered by the
Department.

Very
respectfully,
John D. ...

John D. ...

ENVIRONMENTAL PROTECTION AGENCY

[OPP-]

CREOSOTE, PENTACHLOROPHENOL, AND INORGANIC ARSENICAL
WOOD PRESERVATIVE PRODUCTS

AMENDMENT TO EXISTING STOCKS PROVISION FOR PRODUCTS
CANCELLED BY THE JULY 13, 1984 NOTICE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice clarifies the existing stocks provision for creosote, pentachlorophenol and inorganic arsenical wood preservative products cancelled by operation of law as a result of the July 13, 1984 Notice of Intent to Cancel. Any existing stocks of creosote ~~pentachlorophenol~~ and inorganic arsenical cancelled products, whether in the hands of registrants or others, must be relabeled in accordance with the requirements of the January 10, 1986 amended Notice (51 FR 1334) in order to be lawfully sold and distributed ~~8/12/86~~ after (insert date 90 days from date of publication of this Notice). Existing stocks of cancelled pentachlorophenol manufacturing-use products may not be lawfully sold or distributed after (insert date 90 days from date of publication of this Notice). Existing stocks of cancelled pentachlorophenol end-use products must be relabeled in accordance with the requirements of the January 10, 1986 Notice and must also be consistent with the contaminant limitations set forth in the January 2, 1987 amended Notice (52 FR 140) in order to be lawfully sold and distributed after (insert date 90 days from date of publication of this Notice) until

2/15

(insert date six months from date of publication of this Notice).

After (insert date six months from date of publication of this Notice), existing stocks of pentachlorophenol products cancelled as a result of the July 13, 1984 Notice may no longer be lawfully sold and distributed.

EFFECTIVE DATE: (Insert date of publication in the FEDERAL REGISTER.)

FOR FURTHER INFORMATION CONTACT:

David Stangel,
Compliance Monitoring Staff (EN-342),
Office of Pesticides and Toxic Substances,
Environmental Protection Agency,
Room 711B East Tower,
401 M St., SW.,
Washington, D.C. 20460,
(202-382-7825).

SUPPLEMENTARY INFORMATION:

EPA issued a Notice of Intent to Cancel registrations of wood preservative pesticide products containing creosote, pentachlorophenol, and the inorganic arsenicals (hereinafter referred to collectively as "wood preservatives") which was published in the FEDERAL REGISTER of July 13, 1984 (49 FR 28666). The July 13, 1984 Notice required that certain changes in the terms and conditions of registration must be made if registrants wished to avoid cancellation. In response to the July 13, 1984 Notice, the Agency received requests for a hearing from many of the registrants of

why
Me?

the wood preservative products, thereby staying the effectiveness of the cancellation Notice for those products. Other registrants elected to submit applications for amended registration in conformity with the requirements of the July 13, 1984 Notice. A number of registrants did not either request a hearing or submit a timely application for amended registration for their products; such registrations were therefore cancelled by operation of law.

The July 13, 1984 Notice set forth an existing stocks provision which allowed registrants of cancelled products (as well as products for which an amended registration had been requested) to sell or distribute existing stocks of products in their possession from July 13, 1984 until November 1, 1984, if such stocks bore the labeling approved for the product at the time of publication of the July 13, 1984 Notice. 49 FR 28681. Existing stocks in the possession of individuals other than registrants could be sold and distributed from July 13, 1984 until February 1, 1985 with the "old" labeling. 49 FR 28681. Existing stocks were defined by the July 13, 1984 Notice as "any product affected by this Notice which has been packaged for sale and distribution prior to the date by which the registration of the product is cancelled as a result of this Notice, or the date by which the registrant is required to submit an amendment of the registration of the product to comply with the terms and conditions of this Notice." 49 FR 28681.

On October 31, 1984 (49 FR 43772), the Agency published a notice "postponing the date product labels must be revised to include

restricted use and the other required changes for those products for which an amendment has been sought to comply with the requirements of the July 13, 1984 notice." 49 FR 43772. The October 31, 1984 Notice specifically stated that '(t)he effective dates for all products other than those for which an amendment has been sought remain unchanged from those specified in the July 13, 1984 notice." 49 FR 43772.

The Agency published another notice on January 30, 1985 (50 FR 4269) postponing the effective date of revised labeling requirements for persons other than registrants. Non-registrants were authorized by the January 30, 1985 Notice to sell and distribute existing stocks of both cancelled and uncanceled products bearing the "old" labeling until further notice by the Agency. The January 30, 1985 Notice stated that "(a)t least 90 days before EPA will require a product subject to this notice to bear labeling revised to comply with the terms of the July 13, Notice, the Agency will issue a notice of the new effective dates to be published in the Federal Register." 50 FR 4270. With regard to registrants holding existing stocks of cancelled products, the January 30, 1985 Notice required that "(e)xisting stocks of cancelled products in the control or possession of registrants must be relabeled in accordance with the requirements of the July 13 Notice in order for these products to be sold or distributed."

After considering alternative mechanisms proposed by registrants for accomplishing the regulatory goals set forth in the July 13, 1984

Notice, the Agency published an amended cancellation notice on January 10, 1986 (51 FR 1334) which made certain minor modifications to the labeling requirements of the July 13, 1984 Notice. The only registrants who renewed their hearing requests in response to the January 10, 1986 Notice were certain pentachlorophenol registrants. On January 2, 1987, the Agency published another amended cancellation notice (52 FR 140) which resolved any remaining issues for pentachlorophenol. The January 2, 1987 amended Notice set forth requirements for the limits of hexachlorodibenzo-p-dioxin (HxCDD) and other contaminants in pentachlorophenol products, and mechanisms for the verification and enforcement of such limitations.

In the January 10, 1986 Notice, the Agency simplified the existing stocks provision for the products subject to that Notice in order to avoid confusion in the marketplace, and required that all products subject to the January 10, 1986 Notice, whether in the hands of registrants or others, must be relabeled in accordance with the label language set forth in the January 10, 1986 Notice by 10 months from the date of publication of the Notice (November 30, 1986) in order to be sold or distributed.

The intent of the Agency in developing this simplified existing stocks provision was to accord the same treatment to all existing stocks of wood preservative products, whether in the hands of registrants or others, regardless of whether cancelled by operation of law of the July 13, 1984 Notice or remaining on the market following the submission of a hearing request, or a request to

amend a registration to conform to the Agency's requirements.

However, the language of the January 10, 1986 Notice ~~could have~~ created the impression that the existing stocks of ~~the cancelled~~ products ^{cancelled by the July 13, 1984 Notice in the hands of persons other than} were not covered by the amended Notice ~~by the statement~~ ^{registrants} that the January 10, 1986 Notice did not affect products cancelled ^{persons other than} by the July 13, 1984 Notice. Accordingly, ^{registrants} could have been led to believe that the operative Notice affecting the disposition of existing stocks of cancelled products was the January 30, 1985 Notice.

Under the January 2, 1987 Notice, registrants of end-use pentachlorophenol products could sell and distribute until January 2, 1988 existing stocks manufactured or formulated before January 2, 1987. Such end-use registrants could also use any manufacturing-use pentachlorophenol which was purchased after January 1, 1986 to manufacture or formulate end-use products which could be sold and distributed until January 2, 1988. Similar to the January 10, 1986 Notice, the January 2, 1987 Notice stated that it did not affect those registrations cancelled by operation of law for failure to respond to the July 13, 1984 Notice by either requesting a hearing or submitting a request for amended registration in compliance with the July 13, 1984 Notice. Thus, registrants and others holding existing stocks of pentachlorophenol products cancelled by the July 13, 1984 Notice could have concluded that the existing stocks provision of the January 2, 1987 Notice ^{was} ~~were~~ not applicable to such stocks of cancelled products.

To avoid any further confusion, and to clarify the existing stocks provision for those wood preservative products which were cancelled by the July 13, 1984 Notice, the Agency hereby gives notice as follows:

1. Existing stocks of creosote and inorganic arsenical wood preservative products cancelled by the July 13, 1984 Notice, whether in the hands of registrants or others, must be relabeled by no later than (insert date 90 days after date of publication of this Notice) in accordance with the requirements of the January 10, 1986 Notice in order to be lawfully distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, or received and (having been so received) delivered or offered for delivery to any other person after that date.

2. Existing stocks of pentachlorophenol manufacturing-use products cancelled by the July 13, 1984 Notice, whether in the hands of registrants or others, may not be lawfully distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, or received and (having been so received) delivered or offered for delivery to any other person after (insert date 90 days after date of publication of this Notice).

3. Existing stocks of pentachlorophenol end-use wood preservative products cancelled by the July 13, 1984 Notice, whether in the hands of registrants or others, must be relabeled in accordance with the requirements of the January 10, 1986 Notice and must be consistent with the contaminant limitations of the

January 2, 1987 amended Notice in order to be lawfully distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, or received and (having been so received) delivered or offered for delivery to any other person (hereinafter "sold or distributed") after (insert date 90 days from date of publication of this Notice) until (insert date six months from date of publication of this Notice). After (insert date six-months from date of publication of this Notice), existing stocks of pentachlorophenol products cancelled by operation of law as a result of the July 13, 1984 cancellation Notice may no longer be lawfully sold or distributed.

For purposes of this Notice, consistency with the contaminant limitations of the January 2, 1987 Notice may be demonstrated either by documenting that the end-use product has been manufactured from a conforming pentachlorophenol manufacturing-use product containing no more than 15 ppm HxCDD (and no more than 75 ppm hexachlorobenzene and no detectable 2,3,7,8-TCDD at a limit of detection of no higher than 1 ppb), or by direct analysis of the end-use product demonstrating that the end-use product was formulated from a manufacturing-use product meeting the above standards.

After [insert date 90 days from date of publication of this notice], the Agency will take the position that a pentachlorophenol end-use product cancelled by the July 13, 1984 Notice is not in compliance with regard to contaminant levels unless the individual holding such product for sale and distribution can affirmatively demonstrate compliance with the contaminant limitations. Any

inquiries regarding the demonstration of compliance should be directed to Mr. David Stangel at the address and telephone number given above.

The Agency believes that the 90 day time period will give registrants and others holding existing stocks of wood preservative products cancelled by the July 13, 1984 Notice a reasonable amount of time to relabel their products to bring them into conformity with the requirements of the January 10, 1986 Notice. The Agency recognizes that certain existing stocks of pentachlorophenol products cancelled by the July 13, 1984 Notice may not qualify under the contaminant limitations set forth above, or that the documentation or analysis requirements could be burdensome on the individual holding the stocks. However, the Agency believes that a different or longer existing stocks provision would not be consistent with the Agency's concerted efforts to limit the HxCDD levels in pentachlorophenol products to the lowest possible levels. As the Agency concluded in the January 2, 1987 Notice, the phased-in reduction of the HxCDD levels and the specified limits for other contaminants will allow the benefits of use of pentachlorophenol for wood preservation to exceed the risks. To allow more than 90 days for the sale and distribution of any remaining existing stocks of pentachlorophenol products cancelled by the July 13, 1984 Notice that are not consistent with the contaminant limitations of the January 2, 1987 Notice would not be consistent with that conclusion. Moreover, to assure consistency with the requirements of the January 2, 1987 Notice, the Agency has determined that the 15 ppm HxCDD

limit (pertaining to the manufacturing-use product used to formulate the end-use product) is the appropriate level of compliance for existing stocks of cancelled pentachlorophenol end-use products subject to this Notice. Under the terms of the January 2, 1987 Notice, the last date that manufacturing-use products containing no more than 15 ppm HxCDD could be released for shipment was February 2, 1987; products released after that date can contain no more than 6 ppm HxCDD, with an monthly batch average not exceeding 3 ppm. After February 4, 1989, the batch limit will be 4 ppm, with a monthly batch average not exceeding 2 ppm HxCDD.

The Agency anticipates that after six months, most pentachlorophenol end-use products will be manufactured from manufacturing-use products meeting the 6 ppm HxCDD upper limit. Existing stocks of pentachlorophenol end-use products cancelled in 1984 were probably at best manufactured from pentachlorophenol products meeting the 15 ppm HxCDD limit. Hence, a six month existing stocks provision for pentachlorophenol end-use products cancelled by the July 13, 1984 Notice is consistent with the phased-in approach of the January 2, 1987 Notice. The Agency does not believe that any significant quantities of existing stocks of pentachlorophenol products cancelled by the July 13, 1984 Notice still remain on the market, as registrants and others have had more than three years to sell and distribute such stocks.

Upon the expiration of the time limitations for sale and distribution of existing stocks as set forth in this Notice, disposal of cancelled creosote, pentachlorophenol, and inorganic

arsenical wood preservative products must be in accordance with the requirements of applicable federal, state, and local laws and regulations, including the Resource Conservation and Recovery Act.

Dated:

John A. Moore,
Assistant Administrator
for Pesticides and Toxic Substances.